No....705.....

DEC 31 194
CHARLES ELMORE CRO

Supreme Court of the United States

(OCTOBER TERM, A. D. 1945)

THE FEDERAL NATIONAL BANK, OF SHAWNEE, OKLAHOMA, a corporation, Guardian of the Estate of MINNIE O. CAMMACK, an incompetent person,
Petitioner,

VERSUS

NEW YORK LIFE INSURANCE COMPANY, a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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December, 1945.

UTTERBACK TYPESETTING CO., 12 S. Walker, Oklahoma City 4, Okla.

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No.....

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Justices of the Supreme Court of the United States:

Comes now The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person, and respectfully petitions this Honorable Court to grant a writ of certiorari to review the opinion and decree of the United States Circuit Court of Appeals for the Tenth Circuit, rendered and entered on the 29th day of October, 1945, in the case lately pending in said United States Circuit Court of Appeals for

the Tenth Circuit, styled New York Life Insurance Company, a corporation, Appellant, v. The Federal National Bank of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person, Appellee, being No. 3147 of causes on the docket of said United States Circuit Court of Appeals for the Tenth Circuit, reversing the decree of the United States District Court for the Western District of Oklahoma in said cause in favor of the petitioner and against respondent herein; which said decree of the United States Circuit Court of Appeals for the Tenth Circuit became final on the 6th day of December, 1945, by the denying by that Court of petitioner's petition for a rehearing.

OPINIONS IN THE COURTS BELOW

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit in said cause of New York Life Insurance Company, a corporation (defendant-appellant) v. The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person (plaintiff-appellee), which petitioner here seeks to have reviewed, is not yet officially reported, but appears on pages 229 to 236 of the transcript of the printed record filed herewith.

The opinion of the district court is reported in 57 Fed. Supp. at page 924, and is found on pages 33 to 51 of the transcript of record filed herein.

SUMMARY STATEMENT OF THE MATTER INVOLVED

In 1928 respondent, New York Life Insurance Company, a corporation, issued and delivered to Allen J. Cammack, at Shawnee, Oklahoma, a policy of insurance upon his life in the sum of $10,000.00. Minnie O. Cammack, wife of insured, was named in the policy as revocable beneficiary. The policy was an Oklahoma contract, having been applied for and delivered at Shawnee, Oklahoma, where Cammack and his wife resided.

In July, 1940, one Benjamin Franklin Fields, a convict on parole from the Federal Penitentiary (R. 92-93), claiming to be the owner of the policy by virtue of a written assignment purporting to have been executed and acknowledged by Allen J. Cammack, at Shawnee, Oklahoma, on July 11, 1940 (R. 213), applied to the Company for a policy loan and received from the Company thereon the sum of $7,769.00.

Allen J. Cammack died January 25, 1941, and for several years prior to his death had been continuously and hopelessly insane. On July 11, 1940, he was wholly without understanding of the nature and consequences of his acts (R. 27-28). After his death Fields obtained from the Company the balance of the policy, in the amount of $1,198.17 (R. 185).

June 6, 1941, Minnie O. Cammack was adjudged to be mentally incompetent and The Federal National Bank, of Shawnee, was appointed her guardian; the Court finding that the allegations of the petition for the appointment of

a guardian, which alleged that Minnie O. Cammack was mentally incompetent and did not have sufficient mental capacity to understand in a reasonable manner the nature and effects of her acts, were true and correct (R. 191-192-195). On appeal to the District Court of Pottawatomie County, Oklahoma, the adjudication and appointment were affirmed.

Neither of the Cammacks, or their estates, ever received anything of value, directly or indirectly, on account of the assignment (R. 29). On the date of the purported assignment the Cammacks were living by themselves in their home at Shawnee and had no living parents, brothers, sisters, children or grandchildren. At this time Allen J. Cammack was aged 74 and his wife, Minnie O. Cammack, aged 75 (R. 28).

Upon the affirmance by the district court of the adjudication of incompetency, the Guardian, The Federal National Bank, petitioner herein, commenced this action in the District Court of Pottawatomie County, Oklahoma, to recover the proceeds of the policy for Minnie O. Cammack, its ward. The action was removed to the United States District Court for the Western District of Oklahoma solely upon the ground of diversity of citizenship (R. 1-3).

The defenses pleaded by the Company were a denial of the lack of mental capacity on the part of the insured and beneficiary, estoppel and laches (R. 912). The trial court, after citing Section 22, Title 15, O. S. A. 1941, reading:

> "A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family."

and the decisions of the Oklahoma Supreme Court construing said statute in the cases of *Connecticut General Life Ins. Co.* v. *Cochran et al.*, 95 Okla. 111, 218 Pac. 313; *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422; *Dozier* v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063, held that the pretended assignment to Fields was utterly void, saying:

> "Thus, it has been definitely settled in the State of Oklahoma that such a contract is utterly void, conveys no rights to either the grantee or subsequent parties who act on it even in good faith. In other words, such a contract is of no force or effect than a forged instrument and transfers no greater rights."

and rendered judgment for petitioner (R. 36).

On appeal the United States Circuit Court of Appeals reversed the judgment rendered by the trial court in favor of petitioner, holding that payment to Fields, the assignee named in an assignment (which was utterly void under Oklahoma law) discharged the policy contract. The Circuit Court took no notiice, in its opiniion, of any of the Oklahoma statutes or decisions and did not apply the Oklahoma law as the rule of decision in the case as required by Sec. 34 of the Federal Judiciary Act of September 24, 1789 (1 Stat. at L. 73, 92), chap. 20, 28 USCA, sec. 725.

The United States Circuit Court of Appeals erroneously treated the question of whether payment to Fields, the purported assignee of the insane insured, discharged the policy contract as one of general law and applied thereto what it conceived to be the weight of authority in cases

from other jurisdictions dealing with the payment by banks of the checks of insane depositors and with the payment by insurance companies of the proceeds of insurance policies to new beneficiaries designated by insane insureds, which cases the Circuit Court deemed to be analogous in principle. Under the authority of these cases, the principal of which were *Metropolitan Life Ins. Co.* v. *Bramlett*, 140 So. 752 (Ala.); *Reed* v. *Mattapan Deposit & Trust Co.* (Mass.) 84 N. E. 469, and *Poole* v. *Newark Trust Co.* (Del.) 8 Atl. (2d) 10, the Circuit Court of Appeals held that in paying the proceeds of the policy to Fields, the assignee, the Insurance Company was not dealing with a new contract but was merely performing the original policy contract made at a time when the assured was of sound mind. In so doing the Circuit Court of Appeals overlooked the fact that the cases relied on to support this reasoning all arose in jurisdictions where the particular act of an insane person being considered was only voidable and not void under local law, while in Oklahoma it has been specifically held that a change of beneficiary by an insane insured is a void contract and not a voidable act. See: *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422.

As a second ground for holding that payment to Fields discharged the policy contract the Circuit Court held that the provision in the policy, reading, "the Company assumes no responsibility for the validity of any assignment," operated to relieve the Company from all liability for pay-

ing the proceeds of the policy out on invalid assignments where payment was made without notice of the invalidity, the Court saying:

> "There is no ambiguity or uncertainty as to the meaning of this provision. It can only mean that the Company shall not become liable by virtue of the assignment which for any reason was invalid" (R. 235).

The interpretation or effect of this provision of the policy had not been raised by the parties either in the pleadings, briefs or arguments and this particular defense to the action was not an issue in the case but was established by the Circuit Court of Appeals, so to speak, on its own initiative and no Oklahoma law or authority of any kind was cited in the opinion to support the same. Of course petitioner had no opportunity to plead to or defend as against this defense because it could not and did not know that the same would be considered by the Circuit Court.

The decision of the United States Circuit Court of Appeals for the Tenth Circuit was rendered on October 29, 1945, and within the time required under the rules of said Court petitioner filed a petition for rehearing; again calling the Court's attention to the Oklahoma law (R. 243-272).

The Court's attention was also called to the fact that the construction of the policy provision above referred to by the Circuit Court was in violation of the Oklahoma statutes prohibiting contracts contrary to the policy of express law (R. 268-271). On December 6, 1945, petition for rehearing was denied (R. 274). The duly certified

record, including all the proceedings in said cause in said United States District Court for the Western District of Oklahoma and the United States Circuit Court of Appeals for the Tenth Circuit is filed herewith under separate cover.

JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by Act of February 13, 1925, and that portion of Subsection (B) of paragraph five (5) of rule thirty-eight (38) of Revised Rules of the Supreme Court of the United States, made in pursuance thereof, viz:

> "Where a circuit court of appeals has decided an important question of local law in a way probably in conflict with applicable local decisions,"

And also that portion of Subsection (B) of paragraph five (5) of the same rule reading:

> "Or has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision."

This cause originated in the District Court of Pottawatomie County, Oklahoma, and was removed by respondent to the United States District Court for the Western District of Oklahoma upon the ground of diversity of citizenship and was reversed on appeal by the United States Circuit Court of Appeals for the Tenth Circuit.

The opinion of the Circuit Court of Appeals was filed on October 29, 1945; petition for rehearing was filed in

time allowed under rules of said Court and denied, and final decree was entered on December 6, 1945. Cases thought to sustain the jurisdiction are:

—*New York Ins. Co.* v. *Jackson*, 304 U. S. 260, 82 L. Ed. 1329;

Rosenthal v. *New York Life Ins. Co.*, 304 U. S. 263, 82 L. Ed. 1330;

Ruhlin v. *New York Life Ins. Co.*, 304 U. S. 313, 82 L. Ed. 1290;

Fidelity Union Trust Co. v. *Field*, 311 U. S. 169, 85 L. Ed. 109;

Letulle v. *Scofield*, 308 U. S. 415, 84 L. Ed. 355;

Hudson v. *Moonier*, 304 U. S. 397, 82 L. Ed. 1422.

QUESTIONS PRESENTED

The questions presented by petitioner's petition herein for writ of certiorari are:

(1) Did the Circuit Court of Appeals err in failing to apply the law of Oklahoma as the rule of decision in this case?

(2) Did the Circuit Court of Appeals erroneously treat the questions considered by it on appeal as matters of general law instead of following the applicable state law of Oklahoma?

(3) Is the holding of the Circuit Court of Appeals that payment by an insurance company of the proceeds of the policy to the assignee of an insane insured, entirely without

understanding, discharges the policy contract probably in conflict with applicable decisions of the State Courts of Oklahoma.

(4) Was the action of the Circuit Court of Appeals, in deciding that the provision of the policy providing that the Company assumed no responsibility for the validity of any assignment, relieved the Company from liability because of payments to assignees of any invalid assignments, when the question had not been presented or raised by the parties, such a departure from the accepted and usual course of jurisdictional proceedings as to call for an exercise of this Court's power of supervision.

(5) Was this last holding by the Circuit Court of Appeals contrary to and in conflict with the law of Oklahoma.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(1) The correct determination of this case involves important questions of local law and public policy. Statutes and decisions of Oklahoma on the subject reflect the expressed public policy adopted by the State of Oklahoma for the protection of its mentally incompetent citizens and the decision of the Circuit Court of Appeals in this case, if permitted to stand, creates an exception thereto not authorized by the Legislature or Courts of Oklahoma in favor of insurance companies upon insurance policies. Such an exception constitutes an encroachment in a field of public policy belonging exclusively to the people of Oklahoma.

It is the proper function of the federal courts to ascertain what the State law is and not what it ought to be. *Klaxon* v. *Stenton Mfg. Co.*, 313 U. S. 487, 85 L. Ed. 1477.

Furthermore, Oklahoma statutes provide that all contracts are unlawful which are contrary to the policy of express law (Title 15, O. S. A. 1941, Sec. 211) and which have for their object the exemption of one directly or indirectly from responsibility for his own negligence or violation of law (Title 15, O. S. A. 1941, Sec. 212). Under the decision of the Circuit Court of Appeals in this case insurance companies, by contracts with their policyholders, can relieve themselves from duties and liabilities imposed upon them by law regardless of the statutes of Oklahoma prohibiting such contracts. The rights of all policyholders who are Oklahoma residents are affected by such an interpretation.

(2) The Circuit Court of Appeals has wrongly refused to apply Oklahoma law as the rule of decision in the case and unless it is required to do so by this Court the doctrine of *Erie Railroad Co.* v. *Thompkins* (304 U. S. 64, 82 L. Ed., 1188) availeth nothing. The question of uniformity of decisions is an important one and the accident or circumstance of diversity of citizenship should not be permitted to disturb the equal administration of justice in co-ordinate state and federal courts sitting side by side. If a Circuit Court can, by ignoring the state statutes and decisions of state courts, avoid the necessity of complying with the rule of decision statute it is possible through this procedure to achieve the undesired result of dual systems of juris-

prudence within the territorial boundaries of a state, notwithstanding the repeated pronouncements of this Court. Questions concerning the relations of federal and state courts are considered of public importance. *Guaranty Tr. Co. v. York*, decided June 18, 1945, not yet officially reported, L. Ed. 89, page 1418.

(3) The decision of the Circuit Court of Appeals, if permitted to stand, will furnish a precedent for courts everywhere to hold that state laws governing the validity of contracts or assignments and making certain of them void upon the grounds of insanity, fraud in the inception, lack of contractual capacity, duress, lack of insurable interest, and reasons affecting the public policy of a state do not govern and control the rights and liabilities of insurance companies and their policyholders and that payment by an insurance company to an assignee of a policy discharges the policy contract regardless of the infirmities existing in the assignment and the state laws relating thereto, so long as the insurance company makes such payment without actual notice of the void character of the assignment. If the decision of the Circuit Court of Appeals is followed by courts of other jurisdictions a whole new body of law will thus be created concerning insurance policies, putting them in the class of negotiable instruments and above and beyond the scope of general state laws relating to the capacity of parties to contract and the validity of contracts. If the decision in this case is to initiate such a body of law it is very important that the decision be determined correctly, which we respectfully submit is not the case herein.

SPECIFICATIONS OF ERRORS

Petitioner says that the United States Circuit Court of Appeals for the Tenth Circuit has erred:

(1) In treating the questions decided by it in this case as matters of general law and in failing to apply the law of Oklahoma as the rule of decision herein.

(2) In holding that payment of the policy proceeds to Fields by the Company discharged the policy contract.

(3) In holding that the Company was relieved from liability in this case because of the policy provision reciting that the Company assumes no responsibility for the validity of any assignment.

(4) In rendering a decision contrary to the law of Oklahoma as declared by its statutes and the decisions of its Supreme Court.

(5) In deciding a question not raised by the parties or presented by the briefs.

PRAYER

Wherefore, petitioner prays that a writ of certiorari be issued by this Court directed to the United States Circuit Court of Appeals for the Tenth Circuit to the end that the said opinion and decree of said United States Circuit Court of Appeals for the Tenth Circuit in said cause of New York Life Insurance Company, a corporation, Appellant, v. The Federal National Bank, of Shawnee, Oklahoma, a corpo-

ration, Guardian of the Estate of Minnie O. Cammack, an incompetent person, Appellee, No. 3147 be reviewed by this Court as provided by law, and that upon such review said decree be reversed, and that petitioners have such other relief as to this Court may seem appropriate.

MARK GOODE,
Counsel for Petitioner.

JOHN L. GOODE,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit in said cause of New York Life Insurance Company, a corporation (defendant-appellant) v. The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person (plaintiff-appellee), which petitioners here seeks to have reviewed, is not yet officially reported but appears on pages 229 to 236 of the transcript of the printed record filed herewith.

STATEMENT OF THE CASE

The essential facts of the case are fully stated in petitioners' petition for a writ of certiorari, and in the interest of brevity are not repeated here. Reference will be made to such facts, on points involved, in the course of the argument which follows.

SPECIFICATIONS OF ERRORS TO BE URGED

The United States Circuit Court of Appeals for the Tenth Circuit, in its said opinion in said cause, erred:

(1) In treating the questions decided by it in this case as matters of general law and in failing to apply the law of Oklahoma as the rule of decision herein.

(2) In holding that payment of the policy proceeds to Fields by the Company discharged the policy contract.

(3) In holding that the Company was relieved from liability in this case because of the policy provision reciting that the Company assumes no responsibility for the validity of any assignment.

(4) In rendering a decision contrary to the law of Oklahoma as declared by its statutes and the decisions of its Supreme Court.

(5) In deciding a question not raised by the parties or presented by the briefs.

SUMMARY OF THE ARGUMENT

I.

The Circuit Court of Appeals should have applied the law of Oklahoma as the rule of decision in this case and particularly Section 22, Title 15, Oklahoma Statutes Annotated, 1941, reading:

> "A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family."

The statute was in full force at all times involved in this case, including the date of the delivery of the policy contract in 1928. The Oklahoma Court has construed this statute to mean that all contracts of persons wholly without understanding are utterly void for all purposes, even as to *bona fide* purchasers and encumbrancers for value without notice.

—*Connecticut General Life Ins. Co.* v. *Cochran*, 95 Okla. 111, 218 Pac. 313;

Dozier v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063;

Harris v. *International Land Co.*, 89 Okla. 163, 213 Pac. 845.

A change of beneficiary of an insurance policy by an insane insured has been held by the Oklahoma Court in construing the Oklahoma statute to be a contract by a person wholly without mental capacity falling within the condemnation of the statute and utterly void.

—*McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422.

Both the policy and the assignment were executed and delivered within the State of Oklahoma; the insured and his wife were residents of Oklahoma at all times involved herein and the policy and assignment were Oklahoma contracts and governed by Oklahoma law.

—*Ruhlin* v. *New York Life Ins. Co.*, 304 U. S. 203, 82 L. Ed. 1290.

Under the rule of decision statute, 28 USCA, Sec. 725, and the case of *Erie R. R. Co.* v. *Thompkins*, 304 U. S. 64, 82 L. Ed. 118, and subsequent decisions based upon these authorities the Circuit Court of Appeals should have held the assignment of the policy to be utterly and wholly void. When a contract is void it has no existence for any purpose

and is wholly without force and effect as to all persons and for all purposes. A void contract is the same as no contract.

—*Dexter* v. *Hall*, 15 Wall 9, 21 L. Ed. 73, 67 Corpus Juris 267;

Security Finance Co. v. *Mills*, 195 N. C. 337, 142 S. E. 26;

Jacob v. *Uncle Farm Planting & Mfg. Co.*, 114 La. 1006, 81 So. 604;

Furst & Thomas v. *Merritt*, 190 N. C. 397, 130 S. E. 40.

An assignment of an insurance policy is a contract.

—29 Am. Jur., Sec. 1316;

Devin et al. v. *Connecticut Mutual Life Ins. Co. et al.*, 59 Okla. 192, 158 Pac. 435.

II.

The holding of the Circuit Court that payment of the policy proceeds to Fields discharged the policy contract is not sustained by the authorities cited in the opinion in support thereof. The cases involving a Banker-Depositor relationship are all from jurisdictions where contracts of an insane person are merely voidable and not void. The rule is different in states which have a statute making such contracts void. See, *Am., T. & B. Co.* v. *Boone*, 102 Ga. 202, 29 S. E. 182.

This distinction is also recognized in *Poole* v. *Newark Trust Co.* (Del.) 8 Atl. (2d) 10, one of the cases on which

the Circuit Court of Appeals relied. All of the other cases deal with voidable acts instead of void contracts, a distinction which the Circuit Court of Appeals has failed to recognize. The Alabama case of *Metro. Life Ins. Co.* v. *Bramlett*, 140 So. 752, which seems to be the principal case relied on by the Circuit Court of Appeals dealt with a change of beneficiary by an insane insured and not by an assignment. The Alabama Court merely held that such change of beneficiary was a voidable act and not a void contract. It expressly recognized in its opinion that an assignment would be a void contract and that the result of the case would have been different if the Court had been dealing with an assignment instead of with a change of beneficiary. Under Oklahoma law however a change of beneficiary is a void contract and if a change of beneficiary by an insane insured is void so must an assignment be.

—*McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422.

III.

The Circuit Court of Appeals in deciding that the Company was relieved from liability because of the policy provision reciting that the Company assumes no responsibility for the validity of any assignment, in effect, held that by contract the Company could relieve itself of duties and liabilities imposed by Oklahoma law. This holding is contrary to the statutes of Oklahoma which provide that contracts are unlawful which are contrary to the policy of express law, though not expressly prohibited, or which

have for their object, directly or indirectly, the exemption of any person from responsibility for his own negligence or violation of the law. See Title 15, Oklahoma Statutes Annotated, 1941, Sec. 211 and 212.

The statutes of Oklahoma making contracts of insane people void are legislative expression of the public policy of the State upon the subject. *National Life Ins. Co.* v. *Jayne* (C. C. A. 10) 132 Fed. (2d) 358. A stipulation in a policy contrary to state statute is void. *Whitfield* v. *Aetna Life Ins. Co.*, 205 U. S. 489, 51 L. Ed. 895.

Furthermore the policy contract does not expressly say that the Company shall be relieved from liability because of payments to assignees claiming under void assignments and the provision construed by the Circuit Court of Appeals was not intended for that purpose. It was merely to insure that the Company should assume no obligation to pay an assignee by merely receiving and filing the assignment. The same provision is found in the assignment (R. 215).

IV.

In deciding a question not raised by the parties or presented in the briefs and in failing to apply the Oklahoma statutes as construed by the Oklahoma Supreme Court the Circuit Court of Appeals departed from the accepted and usual course of judicial proceedings to an extent calling for the exercise of this Court's power of supervision.

ARGUMENT

I.

The Circuit Court of Appeals should have applied the law of Oklahoma as the rule of decision herein. The policy was delivered to the insured at Shawnee, Oklahoma (R. 27). The insured was a resident of Oklahoma (R. 27). The rights and liabilities of the parties were governed and controlled by Oklahoma law (R. 32).

In *New York Life Ins. Co.* v. *Jackson,* 304 U. S. 260, 82 L. Ed. 1329, this Court in dealing with an insurance case from the United States Circuit Court of Appeals, Seventh Circuit, said:

> "The court considered the question as one of general law. Its decision should have been made according to the applicable principles of the state law which governed the interpretation of the policy,"

granting certiorari and reversing the judgment.

In *Rosenthal* v. *New York Life Insurance Co.,* 304 U. S. 263, 82 L. Ed. 1330, in a similar case this Court took the same action, saying:

> "It is enough to say that the questions to be decided are those of state law and should have been determined according to the decisions of the state court."

In another case on petition for certiorari to the United States Circuit Court of Appeals for the Eighth Circuit, this Court in a *per curiam* opinion, granted the writ and reversed the judgment of the lower court, saying:

> "The court treated the question of the liability of the lessor as one of general law. The court should have applied the law of Missouri where the injury occurred." (*Hudson* v. *Moonier*, 304 U. S. 397, 82 L. Ed. 1422).

The question involved herein is the interpretation and construction of an Oklahoma Statute, the same being Sec. 22, Title 15, Okla. Stat. Ann. 1941, reading:

> "A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family."

The court below was not at liberty to ignore the decisions of the Supreme Court of Oklahoma and deal with the questions involved as questions of general law. In *Fidelity Union Trust Company* v. *Field*, 311 U. S. 169, 85 L. Ed. 109, this Court said:

> "Here, the question was as to the construction and effect of a state statute. The federal court was not at liberty to undertake the determination of that question on its own reasoning independent of the construction and effect which the State itself accorded to its statute. That construction and effect are shown by the judicial action through which the State interprets and applies its legislation."

The Oklahoma Supreme Court has repeatedly construed the statute above quoted, and its decisions are uniform in holding that the contract of a person wholly with-

out understanding, is absolutely void for all purposes, even as to *bona fide* purchasers and encumbrancers for value without notice.

> "Where a grantor in a deed is incapable of comprehending that the effect of the deed when executed and delivered would be to divest such grantor of title to the land described in the deed, said grantor is as to such deed entirely without understanding within the meaning of Section 4981 Comp. Stat. 1921 (Sec. 22, Tit. 15, O. S. A. 1941) and the deed is void and conveys no rights to the grantee or subsequent purchasers or incumbrancers in good faith."
>
> —*Connecticut Gen. Life Ins. Co.* v. *Cochran et al.*, 95 Okla. 111, 218 Pac. 313.

Under Oklahoma law a purported contract by a person entirely without understanding is utterly void. No rescission is necessary.

> —*Dozier* v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063.

> "A person wholly without understanding has no power to make a contract of any kind."
>
> —*Norris* v. *Dagley*, 64 Okla. 171, 166 Pac. 718.

To the same effect, see also, *Harris* v. *International Land Co.*, 89 Okla. 163, 213 Pac. 845, and *First Nat'l Bank of Enid* v. *Headrick*, 190 Okla. 164, 121 Pac. (2d) 566.

The change of beneficiary by an insane insured wholly without understanding has been held by the Oklahoma

Court to be a "contract" within the meaning of the Oklahoma statute heretofore quoted. See *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422, wherein the Court said:

> "The change of beneficiary in a policy of life insurance, which reserves to the insured the right to do so, made by the insured at a time when he was entirely without understanding, is void, * * *."

The use of the word "void" by the Oklahoma Supreme Court in its decisions concerning the contracts of insane persons is the exercise of a deliberate choice of expressions and not merely the careless use of loose or inept phraseology as the following decisions distinguishing between void and voidable in dealing with the meaning of those terms as related to the contracts of insane persons show: *Adams Oil and Gas Co.* v. *Hudson,* 55 Okla. 386, 155 Pac. 220; *Norris* v. *Dagley,* 64 Okla. 161, 166 Pac. 718; *National Life Ins. Co.* v. *Jayne et al.* (10 Cir.) 132 Fed. (2d) 358.

The Oklahoma statute and decisions are but a declaration of the law concerning the contracts of insane persons as once viewed by this Court. See, *Dexter* v. *Hall,* 15 Wall. 9, 21 L. Ed. 73.

When a contract is void it has no existence for any purpose. It is wholly without force and effect to all persons and for all purposes. The effect of a void contract is the same as if it had never taken place. A void contract is the same as no contract.—67 C. J. 267; *Security Finance Co.* v. *Mills,* 195 N. C. 337, 142 S. E. 26; *Jacob* v. *Uncle Farm Planting & Mfg. Co.,* 144 La. 1006, 81 So. 604; *Furst & Thomas* v. *Merritt,* 190 N. C. 397, 130 S. E. 40. The decision

of the Circuit Court of Appeals in the instant case gives to the assignment a validity and vitality not permitted by the law of Oklahoma. The decision says in effect: "The assignment was not wholly void, it was valid as to the Company because it had no actual notice of the insanity of the insured." The assignment was a contract within the meaning of Oklahoma law.

—*Devin et al.* v. *Connecticut Mut. Life Ins. Co. et al.*, 59 Okla. 192, 158 Pac. 435;

City National Bank of Lawton v. *Lewis et al.*, 73 Okla. 329, 176 Pac. 237.

The insured, Allen Cammack, was a person wholly without understanding (R. 27, 28, 231). Under Oklahoma law his contracts were utterly void. The statute heretofore quoted represents the expressed public policy of Oklahoma concerning the protection of its mentally incompetent citizens. *National Life Ins. Co.* v. *Jayne et al* (C. C. A. 10) 132 Fed. (2d) 358. It should have been given effect by the Circuit Court of Appeals. The public policy with regard to insurance contracts is a matter for the states to decide. *N. W. Mutual Life Ins. Co.* v. *Johnson*, 254 U. S. 96, 65 L. Ed. 155. The failure of the Circuit Court of Appeals to apply the Oklahoma law as the rule of decision in this case, raises questions concerning the relations of federal and state courts which have always been regarded as important by this Court. The rule of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 82 L. Ed. 1188, expresses a policy that touches vitally the proper distribution of judicial power between

state and federal courts. See *Guaranty Trust Co.* v. *York*, not yet officially reported, Vol. 89, L. Ed. Advance Opinions, page 1418. In the case at bar federal jurisdiction rests solely upon diversity of citizenship. As stated by this Court in *Fidelity Union Trust Co.* v. *Field*, 311 U. S. 169, 85 L. Ed. 109:

> "It is inadmissible that there should be one rule of state law for litigants in the state courts and another rule for litigants who bring the same question before the federal courts owing to the circumstance of diversity of citizenship."

II.

The holding of the Circuit Court of Appeals that payment to Fields, the purported assignee, discharged the policy contract, is unsound and not supported by the reasoning or principles of the cases cited to sustain the same. All of the cases cited by the Circuit Court of Appeals in its opinion deal with voidable acts and not void contracts of insane persons. None of the cases deal with the act or contract of an insane insured made void by express statute. For example it is said in the cases cited by the Circuit Court of Appeals in its opinion herein:

> "* * * the general rule is that a contract of an insane person who has not been judicially adjudicated is not void but voidable."
>
> —*Poole* v. *Newark Trust Co.* (Del.) 8 Atl. (2d) 10.

"When this fact (lack of mental capacity) is established the contract is voidable by the lunatic or his representatives."

—*Reed* v. *Mattapan Deposit & Trust Co.* (Mass.) 84 N. E. 469.

None of the cases cited by the Circuit Court of Appeals holds that an assignment is not a contract, but only an act, done in performance of the original policy contract obligation. In *Metropolitan Life Insurance Co.* v. *Bramlett*, 140 So. 752 (Ala.), which is the principal case on which the Circuit Court of Appeals has founded its opinion herein, the Alabama Court was dealing with a change of beneficiary and not an assignment by an insane insured, a distinction which the Alabama Court was very careful to make, saying:

"* * * the general rule is that when a contract is utterly void, it does not have any existence even for the protection of one who relies and acted upon it without notice of its infirmity, and though it is negotiable paper * * *.

"We have stated the foregoing principles, not because they are disputed, but merely as preliminary to a consideration of the question in this case. For they inevitably lead to the conclusion that if the insured's request for a change of the beneficiary in this case was void because of his insanity at the time he executed it, no *bona fides* nor other circumstances could protect any one against the claim of its invalidity though he acted upon it in good faith.

"One question only is therefore of any uncertainty in this case. That is, whether the insured's insanity

caused his request for a change of beneficiary to be utterly void, or did it merely confer upon some one the right at his election to have it voided on that ground?

"In order to answer that question we inquire into the nature of the instrument by which the insured caused the insurer to change the beneficiary. The plaintiff was the original beneficiary named in the policy, but does not claim that it was assigned to him by the insured. * * *

"* * * such property right of the insured remained and continued unaffected after the attempted change of beneficiary as before. It is not claimed that he thereby assigned the policy to the substituted beneficiary, or otherwise undertook to release his right, still reserved, again to effect such a change, even to the extent of naming his personal representatives as the beneficiary. The effect of the attempted change was the exercise of an election reserved to him in the policy to determine whether one or another shall receive its benefits.

"An assignment would deprive him of the right, thereafter to name his own estate or any one else as the beneficiary. Undoubtedly an assignment by an insane person of his rights conveys nothing."

We submit that none of these authorities support the conclusion of the Circuit Court of Appeals in its opinion herein to the effect that an assignment by an insane insured in a jurisdiction where contracts of an insane person are made void by express statutes, is merely the exercise of a power under the original policy contract, and therefore only a voidable act instead of a void contract prohibited

by law. Furthermore, in Oklahoma it has been expressly held that a change of beneficiary by an insane insured is a void contract falling within the condemnation of the Oklahoma Statute. *McMurtray* v. *McMurtray*, 67 Okla. 50, 168 Pac. 422. If a change of beneficiary by an insane insured is void under Oklahoma law, surely an assignment must be, and the Circuit Court of Appeals should have so held in the instant case.

III.

The Statutes of Oklahoma provide

"Those contracts are unlawful which are:

1. Contrary to an express provision of law,
2. Contrary to the policy of express law, though not expressly prohibited; or
3. Otherwise contrary to good morals."

—Title 15, O. S. A. 1941, Section 211, and

"All contracts which have for their object, directly or indirectly to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another or violation of law, whether willful or negligent, are against the policy of the law."

—Title 15, O. S. A. 1941, Section 212.

It is submitted that the decision of the Circuit Court of Appeals, holding that the Company was relieved from liability herein because of the policy provision reading:

"The company assumes no responsibility for the validity of any assignment,"

gives to such provision an interpretation in conflict with the statutes above quoted.

Such interpretation is clearly contrary to the policy of express law of Oklahoma making contracts of insane persons void and not merely voidable. If the interpretation given this policy provision by the Circuit Court of Appeals is correct, no insurance company can be held liable for paying out policy proceeds on assignments void, because of lack of insurable interest, fraud in the inception, insanity, duress, coverture, lack of contractual capacity, or reasons of public policy, although such assignments are made void by express statute of the forum of their execution, where the company acts without actual notice of the invalidity of the assignment, because the Circuit Court says in its opinion concerning this provision:

> "It can only mean that the Company shall not become liable by virtue of the assignment which for any reason was invalid." (R. 235).

Since this provision is in nearly every life insurance policy in the United States and has been for many years, the importance of a correct construction thereof is apparent. It should be noticed that the Circuit Court of Appeals has not cited a single text, case or other authority in support of its construction of this policy provision, nor has it taken recognition of the Oklahoma rule that where an insurance policy is susceptible of two constructions, the construction most favorable to insured must be adopted. *New York Life Insurance Company* v. *Federal Nat'l Bank of Shawnee* (C. C. A. 10) 143 Fed. (2d) 69. It is urged however, that the policy

provisions have no such meaning as is ascribed to it by the Circuit Court of Appeals. Virtually the same provision appears in the assignment blanks furnished by the Company (R. 215), and the obvious purpose is not to relieve the Company from its contract obligation to the policyholder to either pay him, or his legally designated beneficiary or assignee, but to make it plain to everyone that by furnishing blanks and accepting filing of assignments, the Company is not agreeing to pay the designated assignee, irrespective of the validity of his assignment. There is nothing in the provision which by express language indicates a purpose to relieve the Company from any of the obligations or duties imposed by law.

IV.

By failing to follow the Oklahoma law as the rule of decision in this case, and by deciding a question not presented by the parties in their pleadings, briefs or arguments, and not considered by the court below, to-wit: the interpretation of the policy provision last referred to, we respectfully suggest that accepted and usual course of judicial proceedings has been departed from to such an extent as to call for an exercise of this Court's supervision. *Letulle* v. *Scofield*, 398 U. S. 415, 84 L. Ed. 355.

V.

It is respectfully submitted that the right of petitioner for the benefit of its mentally incompetent ward to have the questions involved in this case decided according to the law of Oklahoma, suggests that this Honorable Court should review the decision of the Circuit Court of Appeals herein and enter its judgment affirming the decision of the district court.

Respectfully submitted,

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December, 1945.

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CHARLES ELMORE CR
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No. 705

Supreme Court of the United States

(October Term, 1945)

The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person,
Petitioner,

VERSUS

New York Life Insurance Company, a corporation,
Respondent.

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

(OCTOBER TERM, 1945)

No. 705

THE FEDERAL NATIONAL BANK, OF SHAWNEE, OKLAHOMA, a corporation, Guardian of the Estate of MINNIE O. CAMMACK, an incompetent person,
Petitioner,

VERSUS

NEW YORK LIFE INSURANCE COMPANY, a corporation,
Respondent.

BRIEF OF RESPONDENT

STATEMENT

The question for decision presented to the United States Circuit Court of Appeals for the Tenth Circuit in this case, was whether respondent, who had paid out the full proceeds of a policy of insurance issued by it to the assignee of the insured and beneficiary named in the policy, could be compelled to pay the same a second time to the beneficiary in said policy, where it appeared that insured was without understanding at the time such assignment was made. That Court denied recovery.

The policy was issued June 10, 1928 (R. 163), when there was no question of insured's competency. On July 11,

1940, the insured and beneficiary executed a written assignment of the policy to Benjamin Franklin Fields (R. 213, 214), which was received in evidence (R. 134). This assignment, together with an application for a policy loan of $7,769.00 (R. 220), was transmitted to respondent's Home Office in New York City by letter (R. 219) from its office in Oklahoma City, and received at respondent's Home Office July 17, 1940 (R. 146). After examination of the papers respondent, from its Home Office, on July 22, 1940, issued its check (R. 187), payable to the assignee in the sum of $7,769.00, and forwarded same to the assignee at Tulsa, Oklahoma (R. 146).

After insured's death in January, 1941, assignee made proofs of death (R. 205, 209, 211-212), which were received in evidence (R. 148). After the proofs of death were examined the Company, on February 13, 1941, issued its check (R. 185), payable to the assignee in the sum of $1,198.17, in payment of the balance of the proceeds of the policy, and forwarded it to its Oklahoma City office, where it was delivered to the assignee (R. 148, 149).

At the time of the handling of the assignment, the loan, and the death benefits under the policy, no one at respondent's Home Office was acquainted either with the assignee, the insured or the beneficiary, and had no knowledge of any dealings between them, or of the mental condition, competency or capability of insured or the beneficiary (R. 145). The same was true of all of respondent's employees in Oklahoma who had anything to do with any of the transactions.

On May 24, 1941, the County Court of Pottawatomie County, Oklahoma, without notice, appointed a guardian for the beneficiary "for the reason that she is incompetent to manage her property and does not know and understand the consequences of her acts and is being imposed upon as alleged in said petition, and is in danger of being defrauded" (R. 194). After notice and hearing and on June 6, 1941, such court appointed a guardian for the property and estate of the beneficiary on the ground that "she is mentally incompetent to manage her property" (R. 195).

Thereafter, such guardian instituted suit to recover the proceeds of the policy for the beneficiary.

The trial court found that the insured was wholly without understanding and that the beneficiary was "incompetent to the extent she was unable to manage and care for her property properly unassisted, and, by reason thereof, likely would be deceived and imposed upon by artful and designing persons, and while she was not wholly without understanding, her mental capabilities to judge her transactions properly were impaired" (R. 28).

SUMMARY OF ARGUMENT

I.

The Circuit Court of Appeals has not decided an important question of local law in a way probably in conflict with applicable local decisions. There are no local decisions on the question presented.

II.

In the absence of a decision of any State Court on the point, the Supreme Court will leave undisturbed an interpretation adopted by the Circuit Court of Appeals, whose Circuit includes such State; and rulings of a local federal court applying local law will not be set aside by this Court except on a plain showing of error.

III.

The Circuit Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings as to call for exercise of this Court's power of supervision.

IV.

Where an insurance company has, in good faith, paid over to the person apparently entitled thereto the full amount of the policy without knowledge that insured lacked capacity and without notice of any claim of another, it is grossly inequitable to require it to pay the amount of the policy a second time.

V.

Petitioner and its ward were and are estopped to assert the invalidity of the assignment of the policy or to recover the proceeds from respondent. Petitioner's ward, herself, executed the assignment with intention the policy would be cashed in (R. 140) to enable the assignee to surrender the policy (R. 141), and took the assignment and pen to the insured out on the sun porch and had him sign

it (R. 143). She did not read the assignment to insured because he could not have understood it, but he would do anything she asked him to do (R. 144). This point was urged upon but not reached by the Circuit Court of Appeals, and may be urged here to sustain the judgment of that Court.

ARGUMENT

I.

The Circuit Court of Appeals has not decided an important question of local law in a way probably in conflict with applicable local decisions. As that Court said:

> "No case has been cited, and our search has failed to reveal one, which has compelled an insurance company to pay a policy a second time when in good faith it has paid the amount of the policy to a new beneficiary or to an assignee, on the ground that the assignment or the change in beneficiary was void because of lack of mental capacity of the insured at the time the change was made, and that is so even though the original beneficiary did not join in the application for change of beneficiary or in the application for the assignment of the policy" (R. 232).

It is apparent that the Circuit Court knew there was no applicable Oklahoma decision on the point involved. It is indicated that the Circuit Court had the Oklahoma decisions in mind for in the opinion it said, "Oklahoma, apparently, has never passed upon the right of a beneficiary

to assign an expectancy under an insurance policy" (R. 231).

Petitioner cited no Oklahoma decision on the point in the court below, and cites no such decision here.

In *Connecticut General Life Ins. Co.* v. *Cochran et al.*, 95 Okla. 111, 218 Pac. 313, cited by petitioner, the Oklahoma Court merely held that where a grantor in a deed is incapable of understanding that the effect of such deed would be to divest him of title to the land, he is wholly without understanding and that such deed is void.

In *Dozier* v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063, cited by petitioner, it is held that where a person wholly without understanding executes a promissory note, there is no liability on such note.

In *Norris* v. *Dagley*, 64 Okla. 171, 166 Pac. 718, cited by petitioner, it was held that notes and a mortgage executed by a person wholly without understanding were unenforcible.

In *Devin et al.* v. *Connecticut Mutual Life Ins. Co.*, 59 Okla. 192, 158 Pac. 435, it was held that an assignment, in writing, of an insurance policy transfers the title to the policy and that insured cannot thereafter change the assignment by inserting therein a new name.

In *City National Bank of Lawton* v. *Lewis et al.*, 73 Okla. 329, 176 Pac. 237, cited by petitioner, it was held that an alleged oral assignment of an insurance policy to a bank did not defeat the right of the beneficiary named therein to recover the proceeds of the policy.

In *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422, cited by petitioner, it was held that in a contest between the original beneficiary and a substituted beneficiary named by the insured when he was wholly without understanding, the original beneficiary can recover the proceeds of the policy from the insurance company which still has the money and has not yet paid it to any one.

In none of these cases was the right to recover the proceeds of a policy from an insurance company a second time involved. No Oklahoma court has ever passed on such question, and there was no local law from which the Circuit Court of Appeals could determine the question. As pointed out by the Circuit Court of Appeals, the application for the assignment of the policy did not result in the making of a new contract, but constituted performance on the part of the Company of its contract with insured made at a time when he was admittedly sane (R. 234).

II.

In the absence of a decision of any state court on the point involved, the Supreme Court will leave undisturbed an interpretation placed thereon by the Circuit Court of Appeals, whose Circuit includes such State.

—*McGregor* v. *State Mutual Life Assur. Co.*, 315 U. S. 280, 86 L. Ed. 847.

Rulings of a local Federal Court applying local law will not be set aside by the Supreme Court except on a plain showing of error.

—*Palmer* v. *Hoffman*, 318 U. S. 109, 87 L. Ed. 645.

Where the conclusion reached by the Circuit Court of Appeals does not spring from a statute, nor even from a clear or satisfying line of decisions, the reasoned judgment of such Court will not be reversed by the Supreme Court unless there is a definite conviction of error in the conclusion.

—*Helvering* v. *Stuart*, 317 U. S. 154, 163, 87 L. Ed. 154, 160.

III.

The Circuit Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings as to call for exercise of this Court's power of supervision. Petitioner complains that the court below, in its second ground of decision, held that the policy provision, reading, "The Company assumes no responsibility for the validity of any assignment," prevented a recovery on the policy. Petitioner asserts that such question was not presented by the parties in their pleadings, briefs or arguments. In respondent's amended answer filed in the trial court, respondent specifically pleaded the policy provision above quoted (R. 10). The testimony in the trial court specifically covered the quoted provision of the policy (R. 128). Petitioner, who was plaintiff in the trial court, introduced the original policy in evidence (R. 57), and the policy containing such provision was a part of the record in the Circuit Court of Appeals (R. 162-177). Hence, the contention that this policy provision was not presented to the lower courts is without merit. The Circuit Court of Appeals,

by following the policy provision which was before it, did not depart from the accepted and usual course of judicial proceedings.

Petitioner asserts that the policy provision, above quoted, does not have the effect accorded it by the Circuit Court of Appeals. No authority is cited to this effect. As it was said of this provision by the Circuit Court of Appeals, "There is no ambiguity or uncertainty as to the meaning of this provision. It can only mean that the Company shall not become liable by virtue of the assignment which, for any reason, was invalid" (R. 235).

IV.

Payment, in good faith, of the full amount of a life insurance policy to the last regularly designated beneficiary, without knowledge that insured lacked capacity to make the designation under which payment was made, discharges the insurer's obligation under the policy.

—***State Life Insurance Co.*** v. ***Coffrini*** (C. C. A. 3) **285 Fed. 560;**

New England Mutual Life Ins. Co. v. ***Reynolds,*** **(Ala.) 116 So. 151.**

Where an insurance company has, in good faith, paid over to the person apparently entitled thereto the full amount of a policy, without notice of any claim of another, it is grossly inequitable to require it to pay the amount of the policy a second time.

—*Metropolitan Life Ins. Co.* v. *Bramlett,* (Ala.) 140 So. 752;

Renick v. *Mutual Life Ins. Co.* (Ky.) 106 S. W. 310;

Voss v. *Connecticut Mutual Life Ins. Co.* (Mich.) 92 N. W. 102;

Griffin's Adm'r v. *Equitable Assurance Society* (Ky.) 84 S. W. 1164;

Metropolitan Life Ins. Co. v. *Louisville Trust Co.* (Ky.) 87 S. W. 269;

Nutter v. *Des Moines Life Ins. Co.* (Iowa) 136 N. W. 891.

V.

Under the facts and circumstances of this case, petitioner and its ward were and are estopped to assert the invalidity of the assignment in question or to recover from respondent. In its amended answer in the trial court, respondent pleaded estoppel (R. 11). In its amendment to the answer, estoppel was also pleaded (R. 14, 15). In its Statement of Points to be relied upon in the Circuit Court of Appeals, estoppel was raised (R. 53, Points 8 and 9, R. 54, Point 11). The Circuit Court of Appeals, in its opinion, mentioned the question of estoppel, but did not pass upon it (R. 231).

Points urged upon but not reached by the Circuit Court of Appeals may be urged in the Supreme Court to sustain the judgment of the Circuit Court of Appeals.

—*United States of America* v. *Ballard,* 322 U. S. 78, 88 L. Ed. 1148;

Langnes v. *Green*, 282 U. S. 531, 75 L. Ed. 520;

Story Parchment Co. v. *Paterson Parchment Paper Co.*, 282 U. S. 555, 75 L. Ed. 544.

Minnie O. Cammack, the beneficiary, joined in the execution of the assignment of the policy (R. 140). Although her interest was an expectancy, the assignment of an expectancy or future interest, under Oklahoma law, is enforceable in equity.

—*Kaylor* v. *Kaylor*, 172 Okla. 535, 45 Pac. (2d) 743;

McMahon v. *Foley* (Okla.) 188 Okla. 552, 111 Pac. (2d) 1076.

This is the general rule.

—*Andrews* v. *Bankers Life Company* (Iowa) 240 N. W. 215;

Finegan v. *The Prudential Life Insurance Co.* (Mass) 14 N. E. (2d) 172;

Kendall v. *Equitable Life Assurance* (Mass.) 51 N. E. 464;

Connecticut Mutual Life Ins. Co. v. *Allen* (Mass.) 126 N. E. 367;

Central State Bank v. *Edwards* (Tenn.) 111 S. W. (2d) 873.

Minnie O. Cammack, the beneficiary, testified that the signature on the assignment of the policy was in her own handwriting, and that insured's signature thereon was in his own handwriting (R. 140); that she was present when insured signed the instrument; that he was out on the sun

porch and she took the paper and pen out and had him sign it; that it was her intention when she signed it and turned it over to the assignee that such assignee should cash the policy out, get the money on it and bring it back to her (R. 143, 144); that she did not read the assignment to insured, since that wouldn't have made any difference; that he wouldn't have paid any attention to it; that he could not have understood it, but he would do anything she asked him to do if she told him to do it (R. 144); that she gave instructions to the assignee to have the check made out to her and return it to her (R. 145), but she never did write respondent about it at all or give it any information about it; that the assignee was the only one she told to have the check made out to her (R. 140); that she gave the assignment to the assignee to enable him to get the cash on the policy (R. 140, 141); that she thought sure the assignee would do what he said he would and that she just made a mistake (R. 142).

This testimony shows that the beneficiary actually procured the assignment to be made, with full knowledge of the mental condition of her husband; that she concealed his mental condition from respondent; that respondent was without knowledge, or the means of knowledge, of the real facts; that the assignment was presented to respondent with intention that it should be acted upon; that respondent relied thereon and acted to its prejudice by paying the proceeds of the policy to the assignee.

These are all the elements which, under the local law, are required to constitute estoppel.

—*Rosser* v. *Texas Company*, 173 Okla. 309, 48 Pac. (2d) 327.

It likewise appears that it was through the acts of the beneficiary that the assignee was enabled to procure respondent to pay the proceeds of the policy to him. She put in motion the proceedings to secure such proceeds. She enabled the assignee to occasion the loss which she has sustained, and since respondent is innocent the loss must fall upon the one who occasioned it.

Where one of two innocent persons must suffer by the acts of a third, the one who enables the third person to occasion the loss must suffer it, and what one induces another to regard as true is the truth between them if the other has been misled thereby.

—*Magnolia Petroleum Company* v. *Saylor*, 72 Okla. 282, 180 Pac. 861;

Nelson v. *Jones*, 93 Okla. 85, 219 Pac. 667;

Morris v. *Packard Dallas Co. et al.*, 184 Okla. 277, 86 Pac. (2d) 779;

Joy v. *Farmers National Bank of Chickasha*, 158 Okla. 1, 11 Pac. (2d) 1074;

United States v. *First National Bank of Prague, Oklahoma* (C. C. A. 10) 124 Fed. (2d) 484.

Respondent had no duty to make inquiry as to insured's mental condition.

—*Bosworth* v. *Wolfe* (Wash.) 264 Pac. 413.

The execution of the assignment of the policy by insured resulted from the active instigation, procurement and

solicitation of the beneficiary. She knew his mental condition. Respondent did not know it. According to her testimony insured's acts were her acts because he would do anything she told him to do. If recovery is permitted herein she will be the sole beneficiary of such recovery, since insured left no legal heirs. By actively procuring the assignment to be executed and delivered to respondent, thereby inducing respondent to pay the proceeds of the policy to the assignee designated by insured and beneficiary, the beneficiary estopped herself from asserting the invalidity of such assignment or from recovering the proceeds again from respondent.

—*Franklin Life Ins. Co.* v. *Morrell* (Ark) 106 S. W. 680;

Rusk v. *Fenton* (Ky.) 29 Am. Rep. 413;

Gray v. *Allen* (Tex) 243 S. W. 284;

Coburn v. *Raymond* (Conn.) 57 Atl. 116;

Andrews v. *Bankers Life Co.* (Iowa) 240 N. W. 215.

Although the trial court found Minnie O. Cammack was not capable of managing her property, unassisted, he found she was not entirely without understanding. A person of such capacity is capable of making contracts under local law.

Under Oklahoma decisions, a person may be of unsound mind, aged, an imbecile of the highest order, of weak mind, bordering on idiocy, erratic, irritable, changeable in his views, be incapable of judging values or of making

discreet trades or may not have ability to transact business but he still may make contracts and convey property.

—*Oklahoma Natural Gas Corp.* v. *Lay,* 175 Okla. 75, 51 Pac. (2d) 580;

Monarch Loan Company v. *Shellenberger,* 159 Okla. 247, 15 Pac. (2d) 53;

Maas v. *Dunmyer,* 21 Okla. 434, 96 Pac. 591;

Paulter v. *Manuel,* 25 Okla. 59, 108 Pac. 749;

Scott v. *Scott,* 131 Okla. 144, 268 Pac. 245;

Sanders v. *Rhea,* 119 Okla. 208, 249 Pac. 350.

Under local law, for a person of unsound mind to rescind a contract, restoration of all benefits is necessary whether the lunatic received any actual benefit or not.

—*Edwards* v. *Miller,* 102 Okla. 189, 228 Pac. 1105.

Under the ruling of the trial court and under local law, Minnie O. Cammack was competent to contract, and could not rescind a contract without restoration of all benefits. If, under local law, she had the capacity to contract, she was *sui juris* and could be estopped.

CONCLUSION

It is respectfully submitted that the application for writ of certiorari should be denied.

There are no special or important reasons requiring a review on writ of certiorari. The grounds presented by

petitioner are not of the character calling for the exercise of the Court's discretion.

If a review be allowed, it is respectfully urged that the decision of the Circuit Court of Appeals be affirmed.

Respectfully submitted,

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January, 1946.

No. 705

FILED
FEB 27 194
CHARLES ELMORE CRO

Supreme Court of the United States

(OCTOBER TERM, A.D. 1945)

THE FEDERAL NATIONAL BANK, OF SHAWNEE, OKLAHOMA, a corporation, Guardian of the Estate of MINNIE O. CAMMACK, an incompetent person,
Petitioner,

VERSUS

NEW YORK LIFE INSURANCE COMPANY, a corporation,
Respondent.

PETITION FOR REHEARING

MARK GOODE,
American National Bank Bldg.,
Shawnee, Oklahoma,

Counsel for Petitioner.

Of Counsel:

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American National Bank Bldg.,
Shawnee, Oklahoma.

February, 1946.

UTTERBACK TYPESETTING CO., 13 S. Walker, Oklahoma City 4, Okla.

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Supreme Court of the United States
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THE FEDERAL NATIONAL BANK, OF SHAWNEE, OKLAHOMA, a corporation, Guardian of the Estate of MINNIE O. CAMMACK, an incompetent person,
Petitioner,
VERSUS
NEW YORK LIFE INSURANCE COMPANY, a corporation,
Respondent.

PETITION FOR REHEARING

To the Honorable, the Justices of the Supreme Court of the United States:

Comes now the petitioner, The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person, and feeling aggrieved by the order of this Honorable Court rendered herein on the 4th day of February, 1946, denying the petition for writ of certiorari herein, respectfully requests this Court to vacate said order and to grant a rehearing and in support of this petition and its grounds therefor says:

I.

Petitioner seeks to have reviewed by this Court the decision of the Circuit Court of Appeals for the Tenth

Circuit reversing the judgment of the United States District Court for the Western District of Oklahoma rendered in favor of petitioner in a suit upon a life insurance policy; the policy being an Oklahoma contract (R. 27) and the jurisdiction of the United States Court resting exclusively upon diversity of citizenship (R. 2-3).

II.

The Circuit Court of Appeals held that delivery of the policy proceeds by the respondent Insurance Company to Fields, an ex-convict on parole (R. 92-93) named in a purported assignment bearing the signature of the aged insane insured (R. 28), Allen Cammack, found to be wholly without understanding of the nature and consequences of his acts at the time of the purported assignment (R. 28), constituted performance of the policy contract (R. 234) and exonerated the Company from liability to Minnie O. Cammack, elderly wife of the insane insured, the beneficiary named in the policy, also found to be mentally incompetent (R. 28-29), having been so adjudged by the State Courts of Oklahoma (R. 28).

III.

The Circuit Court of Appeals rested its decision upon the premise that an insurance company should not be required to pay a policy a "second time" saying: "There is no sound legal or moral reason why the Company should be compelled to pay the amount of this policy a second time" (R. 235). The soundness of the decision of the Circuit Court of Appeals depends upon whether the purported

assignment of the insane insured was only a voidable act, or a void contract, wholly void as to all persons acting thereon with or without notice. In holding that the respondent Insurance Company should not be compelled to pay the policy a "second time" the Circuit Court of Appeals, of necessity, found that payment had been made a first time to Fields, the purported assignee. There could be no question of payment a "second time" without payment a "first time." Delivery of the policy proceeds to the assignee of a forged assignment or to a stranger to the policy could not constitute payment under Oklahoma law. The Circuit Court of Appeals cited no Oklahoma authorities in support of its conclusion. Payment, under Oklahoma law, is the discharge of a contract by the performance of its terms.

—*Eastern Oil Company* v. *Smith*, 80 Okla. 207, 195 Pac. 773;

Continental Gin Co. v. *Arnold*, 52 Okla. 569, 153 Pac. 160;

U. S. F. & G. v. *Shull*, 169 Okla. 59, 36 Pac. (2d) 47.

There was no provision in the policy involved requiring or authorizing the respondent Insurance Company to pay the proceeds thereof to a stranger to the policy, the holder of a forged assignment, or the purported assignee of any assignment utterly void and having no legal effect. Consequently the Circuit Court of Appeals in rendering its decision was required to and did ascertain the nature, character and effect of an assignment made by an insane insured wholly without understanding.

IV.

Under Oklahoma law the contracts of an insane person, wholly without understanding, are on the same basis as forgeries and are wholly void as to all persons with or without notice and for all purposes, including *bona fide* purchasers. The United States District Court for the Western District of Oklahoma so found (R. 36). The applicable Oklahoma statute is Section 22, Title 15, Oklahoma Statutes Annotated, 1941, reading:

> "A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family."

The decisions of the Oklahoma Supreme Court, the Court of last resort in Oklahoma, construing the statute are:

> *—Connecticut General Life Insurance Co.* v. *Cochran,* 95 Okla. 111, 218 Pac. 313;
>
> *Dozier* v. *Schuermann,* 175 Okla. 298, 52 Pac. (2d) 1063;
>
> *Harris* v. *International Land Co.,* 89 Okla. 163, 213 Pac. 845;
>
> *McMurtray* v. *McMurtray et al.,* 67 Okla. 50, 168 Pac. 422.

The statute makes no exception as to insurance contracts.

V.

The purported assignment was executed and delivered in Oklahoma and all questions concerning its validity, character and effect should have been determined by application

of Oklahoma law. The Circuit Court of Appeals treated all such questions however as matters of general law and must of necessity have decided that the purported assignment was not wholly void but was of sufficient validity to enable the respondent Insurance Company to discharge the obligation of its policy contract by delivery of the policy proceeds to Fields who without such purported assignment was and must remain a complete stranger to the policy contract. The Circuit Court of Appeals erroneously held that the purported assignment was merely a voidable act and not a wholly void contract.

VI.

In determining the validity of the assignment the Circuit Court of Appeals did not cite a single Oklahoma authority or statute but rested its conclusions entirely upon authorities from other jurisdictions where the contracts of an insane person are merely voidable and not void.

VII.

It is submitted that the primary question of the validity and effect of the purported assignment should have been determined by the Circuit Court of Appeals under Oklahoma law in accordance with the terms of the rule of decision statute, 28 USCA, Sec. 725, and the doctrine of *Erie R. R. Co.* v. *Tompkins,* 304 U. S. 64, 82 L. Ed. 118. By virtue of these authorities petitioner had a right to have the Circuit Court of Appeals determine the question of the validity and effect of the assignment in accordance with Oklahoma law applicable thereto. This, the Circuit Court

of Appeals has failed to do and this Court should protect the right of petitioner by granting certiorari and reversing the cause with directions to determine the Oklahoma law applicable to the questions involved herein as it has done on numerous occasions.

—*Rosenthal* v. *New York Life Ins. Co.*, 304 U. S. 263, 82 L. Ed. 1330;

New York Life Ins. Co. v. *Jackson*, 304 U. S. 261, 82 L. Ed. 1329;

Ruhlin v. *New York Life Ins. Co.*, 304 U. S. 202, 82 L. Ed. 1290;

Griffin v. *McCoach*, 313 U. S. 498, 85 L. Ed. 1481;

Pecheur Lozenge Co. v. *National Candy Co.*, 315 U. S. 666, 86 L. Ed. 1103;

Huddleston v. *Dwyer*, 322 U. S. 232, 88 L. Ed. 1246.

VIII.

This Court has repeatedly granted certiorari because of the failure of Federal Courts to follow local law in diversity of citizenship cases; the questions raised by such failure being considered questions of public importance involving the relationship of State and Federal Courts.

See:

—*West* v. *American Tel. & Tel. Co.*, 311 U. S. 223, 85 L. Ed. 139;

Stoner v. *N. Y. Life Ins. Co.*, 311 U. S. 464, 85 L. Ed. 284;

Equitable Life Ins. Co. v. *Halsey, S. & Co.*, 312 U. S. 410, 85 L. Ed. 920;

Fidelity Union Trust Co. v. *Field*, 311 U. S. 169, 85 L. Ed. 109;

Ruhlin v. *New York Life Ins. Co.*, 304 U. S. 202, 82 L. Ed. 1290;

Cities Service Oil Co. v. *Dunlap*, 308 U. S. 208, 84 L. Ed. 196.

Petitioner urges that the fact that the primary question of law upon which the soundness of the decision of the Circuit Court of Appeals rests, has erroneously been decided without reference to the controlling Oklahoma law applicable thereto, has been overlooked by this Court and that this Honorable Court should protect the right of petitioner to have such primary question of law determined in accordance with the rule of law prevailing in Oklahoma with respect thereto, by reversing this cause and requiring the Circuit Court of Appeals to render an opinion in harmony with Oklahoma law. Unless this Court will protect by appropriate action the right of a litigant in a diversity of citizenship cases to have a case decided by the Circuit Court of Appeals in accordance with the principles of local law applicable to the case, then the doctrine of *Erie R. R. Co.* v. *Tompkins*, is merely a declaration of abstract principle which the various Circuit Courts of Appeal may disregard at will, with impunity.

WHEREFORE, petitioner prays that it be granted a rehearing herein and that upon a rehearing this Court grant a writ of certiorari as prayed for and a decree of the Circuit Court of Appeals for the Tenth Circuit be reversed and

that petitioner have such other relief as to this Court may seem appropriate.

Respectfully submitted,
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Of Counsel:

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February, 1946.

CERTIFICATE OF COUNSEL

Mark Goode, counsel for the petitioner, does hereby certify that the above and foregoing petition for rehearing is filed in good faith and with the belief that such petition is meritorious and should be considered by the Court, and further certifies that said petition for rehearing is not filed for purposes of delay.

Dated at Shawnee, Oklahoma, this 19th day of February, 1946.

MARK GOODE.